

## Minutes September 8, 2016 Meeting

The North Carolina Environmental Management Commission met on Thursday, July 14, 2016 in the main floor hearing room in the Archdale Building, Raleigh, NC. Commissioners present were:

Steven J. Rowlan, Chairman  
David Anderson  
Charlie Carter  
Gerard Carroll  
Tommy Craven  
Charles "Boots" Elam  
E.O. Ferrell  
Kevin Martin, Vice-Chairman  
Bill Puette  
Larry Raymond  
Bob Rubin  
John D. Solomon  
Steve Tedder  
Julie Wilsey

Commissioner Butch Smith and Commissioner Charles Elam were both absent.

Attorney Phillip Reynolds attended in Commission Counsel Jennie Hauser's absence.

### I. Preliminary Matters

The meeting was called to order at 9:00 a.m. with Chairman Rowlan presiding. He provided the notice required by N.C.G.S. §138A-15(e). No conflicts of interest or appearances of conflicts of interests were identified at this time.

### II. Approval of Minutes

The Chair asked for approval of the minutes from the Commission meeting on July 14, 2016. **Commissioner Anderson** made a motion to approve the minutes and **Commissioner Ferrell** seconded the motion. The motion passed unanimously.

### III. Action Items

#### **Agenda Item: 16-37 Approval of the Periodic Report of Existing Rules Review for 15A NCAC 02A for submission to the Rules Review Commission**

Craig Bromby, DEQ/Deputy General Counsel reported on this item. He explained that the procedures for the periodic review of existing rules mandated by S.L. 2013-413 (HB74) were undertaken for the EMC's organizational rules in 15A NCAC 02A, including publication and solicitation of public comment, and Subchapter 02A consisted of five separate rules.

He stated that an initial determination of “unnecessary” was proposed for two rules (.0101 and .0103), and initial determination of “necessary without substantive public interest” was proposed for the remaining three rules (.0102, .0105, and .0107). Also, there were no comments submitted during the public comment period. He stated that the final determinations were proposed to remain the same as proposed initially. On behalf of staff he was requesting approval of the report for submission to the Rules Review Commission.

**Commissioner Tedder** made a motion that the EMC approve the report for submission to the Rules Review Commission. **Commissioner Martin** seconded the motion and the motion passed unanimously.

**Agenda Item: 16-38 Hearing Officer's Report on Repeal of 15A NCAC 02D .1010 Heavy-Duty Vehicle Idling Restrictions (535)**

Lori Cherry, Division of Air Quality presented the results of the hearing held on May 25, 2016, in Raleigh, NC, to repeal the Heavy-Duty Vehicle Idling Restrictions rule, 15A NCAC 02.1010. A summary of the Hearing Officer's Report including a summary of public comments was presented. The repeal of the rule was initiated due to a legislative directive which obligates the Secretary of DEQ, pursuant to Section 4.24 of Session Law 2015-286, to carry out a repeal and prohibits further implementation or enforcement of the rule.

The rule, which was adopted in 2010 was intended to reduce nitrogen oxide (an ozone precursor) and particulate matter emissions from heavy-duty trucks through the reduction of unnecessary idling. Currently, the state is meeting all the National Ambient Air Quality Standards and does not have any ozone or particulate matter non-attainment areas. Additionally, idling consumes fuel, which is a large expense for the trucking industry, and may cause more damage to the engine than starting and stopping; these adverse impacts produces an incentive for trucking companies to enforce their own restrictions on idling.

The hearing officer noted that four persons provided comments expressing that a repeal would not protect air quality standards; there could be potential health impacts from diesel exhaust, including near fracking sites and that a repeal could pose potential environmental justice problems. The hearing officer recommended that he proposed repeal be adopted by the Environmental Management Commission (EMC).

**Chairman Rowlan** indicated that a repeal was required and that enforcement of the rule was not allowed. **Commissioner Raymond** noted that although the EMC was required to take the action, objected to the repeal by pointing out that diesel emissions are no less toxic or carcinogenic since the rule went into effect in 2010. **Chairman Rowlan** noted that there were similar comments in the hearing record.

**Commissioner Carter** made a motion that the EMC approve the Hearing Officer's recommendation to repeal the rule. **Commissioner Ferrell** seconded the motion. The EMC voted to repeal the rule with four dissenting votes.

**Agenda Item: 16-39 Hearing Officer's Report on Revisions to Volatile Organic Compound (VOC) Rules in 15A NCAC 02D .0902 (532)**

Lori Cherry, Division of Air Quality presented the results of the hearing held on May 25, 2016, in Raleigh, NC, to address narrowing the applicability of 15A NCAC 02D.0902, Work Practices for Sources of Volatile Organic Compounds (VOC). The work practices would no longer be applied statewide but instead be limited to the maintenance area of the 1997 8-hour ozone standard, predominately the Charlotte area. VOCs come from solvents, carriers, material processing, chemical reactants or processes that manufactured or emit VOCs in mixing, blending or manufacturing. Due to the abundance of biogenic, or naturally occurring, VOCs, the impact on the atmospheric chemistry for ozone formation in NC is limited by the amount of available nitrogen oxides (NOx) for VOCs to react with and form ozone. In NOx-limited areas like North Carolina, reducing manmade VOCs has negligible impact on ozone formation.

However, provisions of the Clean Air Act (CAA) require that the VOC controls previously implemented in an ozone non-attainment area prior to redesignation of the area back to attainment remain in place. Facilities outside the maintenance area would no longer be required to comply with the work practice standards as specified in 15A NCAC 02D.0958. Thus, the proposed amendment removes 15A NCAC 02D.0958 from the list of rules that apply statewide to comply with provisions of G.S. 150B-19.1(a) to remove unnecessary requirements that are not expressly authorized by federal or State law and that are not necessary to serve the public interest and thus reduce burden upon regulated facilities.

Regulatory relief for facilities outside of the maintenance area would be realized. Some facilities may no longer need permits, or may no longer need to document these emissions on their permits, and recordkeeping and reporting requirements would be eliminated for others. The hearing officer noted that two persons provided comments. One person noted that more information was needed to demonstrate that the rule change would not interfere with air quality or other relevant requirements of the CAA. DAQ anticipates that if there is a VOC emissions increase, it would not be expected to impact compliance with the ozone standard due to the NOx limitations. DAQ will provide any demonstration that this change will not interfere with attainment or maintenance of the ozone standard as part of a required submittal to EPA. The second commenter noted that other federal guideline intended to control VOCs through work practice standards were not sufficient to ensure worker safety in facilities. This rule is intended to assist in addressing ambient air quality matters only. There are other mechanisms for addressing worker safety. No changes were made to

the proposed amendment to the rule as a result of the comments and the Hearing Officer's recommendation was for the Environmental Management Commission to adopt the rule revision.

One question was asked about whether there were other rules that addressed worker safety. DAQ replied that there were.

A question was raised as to whether there was a fiscal impact note. Ms. Joelle Burleson, DAQ, indicated that a regulatory impact analysis was prepared and approved by OSBM at the beginning of the process and as required before going to public notice and comment, the EMC had approved it. There was not a substantial impact as a result of the revision and no changes were made to the analysis subsequent to the hearing. It was noted by the Attorney General that the fiscal note has to be also be adopted.

**Chairman Rowlan** noted that work practice standards do not really result in a lot of control over VOCs and that the OSHA rules are sufficient. DAQ indicated that the worker safety rules and the rules to protect air quality are different. DAQ believes that changing these rules are not likely to impact ozone formation. Commissioner Carter explained that the key point is that limiting NOx emissions suppresses ozone formation in North Carolina. DAQ indicated that there are anti-backsliding measures in place and affected facilities in the maintenance area would still have to comply with the work practice standards.

**Commissioner Carter** moved to adopt the rule change and fiscal note. **Commissioner Wilsey** seconded the motion. The EMC voted unanimously in favor of the motion.

**Agenda Item: 16-40 Hearing Officer's Report on Startup, Shutdown and Malfunction (SSM) State Implementation Plan (SIP) Call Rule Revisions (533)**

Michael Pjetraj, Division of Air Quality presented the amendments to the existing 15A NCAC 02D .0535 rule, the new 15A NCAC 02D .0545 rule and a summary of the Hearing Officer's Report including comments received. The report was provided to the commissioners. The rulemaking was initiated due to the EPA's finding that our State Implementation Plan (SIP), in addition to thirty-five other states, was "substantially inadequate" with respect to start-up, shut-down and malfunction provisions. The EPA issued a "SIP Call" in 2015 for the affected states to modify their rules. The amended 15A NCAC 02D .0535 rule includes an "if-then" applicability paragraph that defines when 15A NCAC 02D .0535 is valid relative to ongoing litigation and EPA action. The new 15A NCAC 02D .0545 includes a similar "if-then" applicability paragraph defining when 15A NCAC 02D .0545 is valid relative to ongoing litigation and EPA action. 15A NCAC 02D .0545 addresses the SIP call by eliminating the DAQ Director's discretionary ability to exempt a

source from an emission standard during periods of start-up, shut-down and malfunction. 15A NCAC 02D .0545 also allows facilities to demonstrate compliance with numeric emission standards or work practice standards during start-up, shut-down or malfunctions. The effective date of the 15A NCAC 02D .0545 rule was set to May 22, 2018, so that any litigation and EPA action could be resolved. A question was asked requesting clarification on EPA's comment regarding enforcement discretion. The EPA requested that the rule "condition must be clear that it does not prevent or impact the EPA or citizen rights to pursue enforcement action." The DAQ explained that DAQ believes that the rule allows for the EPA or citizens to pursue enforcement action. The DAQ also believes that the rule language is consistent with our other rule language regarding enforceability and therefore, additional language regarding enforceability is not needed. A question was asked regarding the clean fuel comment from the regulated community and whether the fuel would need to be permitted. The DAQ stated that the generally available work practice standards in 15A NCAC 02D .0545(j) require that a facility "shall commence operations while firing on the cleanest permitted fuel, to the extent practicable." Therefore, the fuel would need to be permitted and only permitted fuels could be required. A question was asked whether facilities would be required to model and include the modeling in permitting actions. The DAQ responded that it does not anticipate any modeling being required.

**Commissioner Carter** made a motion that the EMC approve the Hearing Officer's Report and adopt the proposed rule package and the fiscal note as it came to the EMC originally. **Commissioner Ferrell** seconded the motion. The EMC voted unanimously in favor of the motion.

**Agenda Item: 16-41 Request Approval to Send Stormwater Annual Report to the Environmental Review Commission (ERC) in accordance with GS 143-214.7**

Bradley Bennett, Division of Energy, Mining & Land Resources indicated that basically this was a report from the last year to the ERC from the Commission on all their programs and what was presented to the Water Quality Committee at the August meeting. It was approved there with a few changes, essentially the additions were to add in a couple of references to some things that happened recently in legislature. Mr. Bennett requested on behalf of staff approval to forward the report to the ERC for their consideration.

**Chairman Rowland** asked for questions and made comments on the report. **Commissioner Solomon** made a motion that the EMC accept approval to forward the report to the ERC. **Commissioner Raymond** seconded the motion and the motion passed unanimously.

**Agenda Item: 16-42 Stormwater Rules Sections 15A NCAC 2H .0100 and .1000 – Request to Adopt Revisions in Response to RRC Request for Technical Changes**

Annette Lucas, Division of Energy, Mining, & Land Resources presented the powerpoint and report provided to members, explained the tasks accomplished by the MDC Team and DEQ Stormwater staff (see powerpoint for more detail), and recommended that the EMC approve the Hearing Officer's Report and adopt the proposed rule package. **Commissioner Solomon** explained that his recommendation to allow licensed landscape architects to submit fast-track permit applications was based on current statutes. **Chairman Rowland** asked staff to report back to the Commission on professional licensure issue in the future.

**Commissioner Martin** made a motion that the Commission adopt the rule package with the following two amendments: a sentence was added to the definition of "Seasonal High Water Table" to identify how it can be determined in the field, and a requirement was added to the Wet Pond MDC Rule (.1054) to require that a minimum of six inches of sediment storage be provided. **Commissioner Solomon** seconded the motion. The motion passed unanimously.

**Agenda Item: 16-43 Request Approval for Submission to ERC of the Basinwide Water Quality Management Plans Annual Report per G.S. 143-215.8B (d)**

This item was removed from the September agenda.

**Agenda Item: 16-44 Request Approval to Proceed to Public Hearing with Proposed Reclassification of a Segment of the Catawba River (including Lake James) in McDowell and Burke Counties (Catawba River Basin) to Class WS-IV**

Elizabeth Kountis, Division of Water Resources, stated the reclassification was for a new water supply intake in Lake James, an impoundment on the Catawba and Linville Rivers, and will allow the lake to be used as a public water supply source. She stated this new source will allow McDowell County to meet local water demands; thus, this proposal serves the public interest per Executive Order #70 and complies with G.S. 150B, the Administrative Procedures Act, and described how a WS-IV Critical Area and Protected Area are measured for a reservoir, and pointed out these proposed areas for Lake James on a map. She stated the requirements of the proposal, and no activities in the proposed area would be impacted by it. Ms. Kountis indicated that Burke & McDowell Counties and the City of Marion would need to alter their ordinances to reflect the reclassification's requirements, and associated resolutions from these entities had been received. She said the proposal's fiscal note shows a cost of \$2,000 to both Burke and McDowell County, \$10,000 to the City of Marion, and \$2,700 to the state. Lastly, she provided a proposed May 1, 2017 effective date for the proposal.

**Commissioner Rubin** asked if the proposal would affect any downstream users. Ms. Kountis stated a very small amount is to be taken out of the lake via figures for the intake's capacity and 7Q10, Duke would be involved, and comments will be heard during the comment period. **Commissioner Rubin** said the short answer to his question is probably "No," and Ms. Kountis responded perhaps not, but comments will not be known until the public hearing process.

**Commissioner Tedder** made a motion to proceed with approval of public notice & hearing and fiscal note, and **Commissioner Rubin** seconded it and the motion passed unanimously.

**Chairman Rowlan** said the fiscal impact is minimal and asked for confirmation that the communities are in favor of this (proposal), as they are here asking for it. Ms. Kountis stated (McDowell) County is, and **Chairman Rowlan** asked about the other communities. Ms. Kountis said (the state) had not heard all comments, Burke County and the City of Marion have jurisdiction in the proposed area, and Burke County's ordinance meets or exceeds the reclassification's requirements. **Chairman Rowlan** asked for confirmation that the public hearing will bring "all of these things out," which Ms. Kountis affirmed. **Vice-Chair Martin** asked that during the hearing it is made clear that once we classify, that (we) couldn't reclassify to anything less stringent than WS-V even if the withdrawal never occurs. He said we've gotten burned on that (issue) before and it is important for the public to understand that's EPA's opinion. **Chairman Rowlan** said so it's no backsliding? **Vice-Chair Martin** said if there's no withdrawal, why wouldn't you be able to, but they told us no. Commissioner Rubin said it's the highest and best use.

**Agenda Item: 16-45 Request to Proceed with Rules Review of Rules 15A NCAC 02E in accordance with SL 2013-413**

Nat Wilson, Division of Water Resources indicated that the request was a three step process we're currently in step one where the agency proposes an initial determination and seeks public comments. He further stated that the determinations were one of three, either unnecessary, necessary without substantive public interest, or necessary with substantive public interest. There are five sections in Subchapter 15A NCAC 02E with a total of 27 rules which include rules governing general provisions, the registration of water withdrawals and transfers, the regulation of surface water transfers, the Central Coastal Plain Capacity Use Area, and water use during droughts and water supply emergencies. He informed the EMC that they had approved proceeding to public comment period for 02E and all 02E rules were placed in the category "necessary with substantive public interest" in January 2016. The public comment period occurred between January 29, 2016 and April 8, 2016 they received one comment on one rule and the commenter agreed with



that initial determination. He indicated they are in the schedule for 02E rules review and are requesting the EMC to take action to approve these determinations. The next step was to send their report to the Rules Review Commission in October 2016 and they are requesting approval of the determinations to be submitted to the Rules Review Commission for Subchapter 15A NCAC 02E.

**Commissioner Tedder** made a motion that the EMC approve the determinations to be submitted to the Rules Review Commission for the periodic review of existing rules in Subchapter 15A NCAC 02E as staff recommended. **Commissioner Solomon** seconded the motion and the motion passed unanimously.

**Agenda Item: 16-46 Request to Approve Recommendation to Appoint Members to the Water Pollution Control System Operators Certification Commission**

**Chairman Rowlan** asked if anyone wanted to discuss this item or if they wanted to make a motion. He indicated that the nominees for the WPCSOCC appeared to be confident members. **Commissioner Rubin** made a motion to approve the recommendation to appoint the three members, Mr. David, Mr. Waters and Mr. Godfrey to the WPCSOCC. **Dr. Raymond** seconded the motion and the motion passed unanimously.

**Agenda Item: 16-47 Request Approval of Initial Determination of Rules 15A NCAC 02C in Accordance with HB74 and G.S. 150B**

Debra Watts, Supervisor with the Water Quality Regional Operations Section of the Division of Water Resources, presented the regulatory requirements for Session Law 2013-413 which requires existing rules be reviewed through G.S. 50B-21.3A. Ms. Watts presented the regulatory review of the 15A NCAC 02C Well Construction Standards. She presented an overview of her briefing, which included regulatory requirement, categories of determinations, the review process, the initial determination, final recommendation, and the schedule. She stated that every agency has to look at all their rules and put them in a category of determination. She briefly described the three categories of determination and the three step process. She explained the initial determination was Necessary with Substantive Public Interest for all the well construction rules: 15A NCAC 02C .0100, Well Construction Standards, .0200 Criteria and Standards applicable to Injection Wells, and .0300 Permitting and Inspection of Private Drinking Water Wells. She stated they received 15 total comments, which addressed the standards of construction and well maintenance; most of these comments were made by one citizen; 13 out of 15 commenters agreed with the recommendation, but the commenters did not address the categories of determination. The fact that 15 comments were made substantiated the final recommendation, which was Necessary with Substantive Public Interest. Ms. Watts requested the EMC approve the 15A NCAC 02C to proceed to the RRC with the final recommendation of



Necessary with Substantive Public Interest, and if approved, they would go to the RRC in October 2015, and receive a final determination in December 2016.

**Chairman Rowland** asked Ms. Watts if she had already reached out to the well driller association and talked with well drillers. She responded that they have interacted with them over the years; when they draft the rules, they will reach out to them and also talk to the Local Health Departments (many comments expected). She assured the EMC they would reach out to the well driller certification commission as well.

**Commissioner Wilsey** stated since one of the comments had commented on the well construction standards, they must not have understood the process, and asked Ms. Watts if she had reached out to them. Ms. Watts stated these comments were posted on the web, but the comments were preserved for the draft rule and they would address them during the public hearing. **Commissioner Wilsey** stated the commenter may think they have already submitted comments and may not resubmit them. She wanted to make sure the agency preserved the comments and used them at the appropriate time.

**Commissioner Tedder** made the motion that the Commission approve the staff recommendations and proceed to the RRC. The motion was seconded by **Commissioner Ferrell**. Recommendation was approved.

**Agenda Item: 16-48 Permission to Proceed to Public Comment and Hearing on 02N and 20 Rule**

Ruth Strauss, Division of Waste Management/UST section presented an overview of the proposed amendments to UST rules 15A NCAC 02N and 02O. The overview highlighted:

- Rules affected
- Purpose of the amendment
- Rule language changes: some modifications, substitutions or additions. Most changes to rules were in response to comments from RRC Counsel. Also to improve consistency, update cited references, incorporate department policy and avoid redundancy.
- State's requirement to incorporate the federal changes

Ms. Strauss presented examples of proposed rule revision: modification, substitution, addition or removal. A timeline for the proposed rule action reflected a possible effective date of rules as June 1, 2017. Ms. Strauss continued to discuss, answer questions and address concerns from the Commissioners.

**Commissioner Martin** made a motion that the EMC approve to proceed to public comment and hearing on the 15A NCAC 02N and 02O rules as they are proposed and approval of the draft fiscal impact report. **Commissioner Ferrell** seconded the motion and the motion passed unanimously.

**Agenda Item: 16-49 Request for Permission to Proceed to Public Comment and Hearing on Proposed Rule Modification of 15A NCAC 02L .0507**

Scott Bullock, DWM UST Section Corrective Action Branch gave a brief introduction of his request for permission to proceed to the EMC for public comment and hearing on proposed rule change to newly adopted 15A NCAC 02L .0507. He began by stating that for the background, the rulemaking process for 2L .0500 began in the spring of 2014 through the petition process and by September of 2015 the it was nearly complete. He further stated that the 2L .0500 Rules became effective March 1, 2016. Section 4.7 (e)(1)b of SL 2015-286 added requirements for “off-site properties.” SL 2015-286 was enacted September 30, 2015 which added requirements that affected this area of rules. Specifically, written consent to allow site specific risk-based clean-up and providing information to the off-site property owner. A short clarification referring to the General Statute affected by the Session Law is needed. 15A NCAC 02L .0507 is proposed for amendment as follows: (b) Remediation of sites with off-site migration shall be subject to the provisions of G.S. 143-215.104AA. A fiscal note has been prepared and approved by the Office of State Budget and Management.

Discussion continued between Mr. Bullock with Commissioners asking questions mostly related to competency of people submitting risk based determinations. Mr. Bullock responded that the risk based determinations were specified in the regulations and guidance and that the UST Section makes the final determination on the risk determinations. Another question was asked about risk analyses being applied consistently throughout the program and he responded that the criteria are being applied consistently.

**Dr. Rubin** made a motion that the EMC approve the request proceed to public comment and hearing on the proposed rule modification of 15A NCAC 2L .0507. **Dr. Raymond** seconded the motion. The motion passed unanimously.

**Agenda Item: 16-50 Request Approval of Revisions to 15A NCAC 02I .0501**

Michael Scott, Director of Division of Waste Management presented proposed changes for 15A NCAC 02I .0501 – updating the department’s name, updating the Division of Water Resources’ name, and including the Division of Waste Management. Mr. Scott requested adoption of the proposed changes, and to send the rule to the Rules Review Commission, based on the fact the a 60-day hearing and public comment period is not required.

**Commissioner Martin** made a motion that the EMC approve adoption of the proposed changes as presented to 15A NCAC 02I .0501 and **Commissioner Anderson** seconded. The motion passed unanimously.

### III. Concluding Remarks

#### By Committee Chairs

**WQC Chairman Wilsey** stated that **Vice-Chair Solomon** had conducted the committee meeting in her absence.

**Vice-Chair Solomon** stated that they had five items on the agenda, basinwide management plans which the EMC had already discussed. After that a major variance for a riparian buffer over in Durham which was approved and DEMLR presented some information on the Dam Safety rules and the upcoming reclassification of those rules. They also had an overview of the Nutrient Regulatory Framework Workgroup that was required by the EMC in December. **Commissioners Tedder, Rubin,** and for all of those that didn’t know yet, either **Commissioner Wilsey** or himself will be working with staff to make sure they name the stakeholder’s workgroup. The other lengthy discussion that the committee had was over riparian buffer limitations for local governments. They have to by session law take action at the next meeting and they have to take action basically for local governments who exceed a 50 ft. buffer of any type, a setback to submit a scientific study. If they don’t submit a scientific study they will not rule on it. He indicated that they have four or five that are submitted. There was a bit of discussion about needing clarification in session law that was intended to be cleaned up a little bit but wasn’t. The EMC has to look at the four that think they were subject to that and rule whether they are justified in that opinion or not. **Commissioner Tedder** and **Vice Chair Martin** had some things to get clarified. They are going to try and get some clarification on those before this comes back to the committee the next time. **Vice-Chair Martin** further stated comments regarding this issue. He indicated that there were three things that he had outlined that they needed Counsel to give them guidance on. One was when does the 90-day clock begin on them; when would the application be complete and who makes that decision. What if they have a municipality that is split, for example in Wake County with

part in Jordan and part in the Neuse. The Department has told these municipalities unless you were delegated by the EMC, you're not applicable to this. He stated that his question was when they rule on Wake County, does that ruling cover the entire county or does it just cover Jordan? Thirdly, the definition of what defines a local environmental study of local conditions. That was the final issue as to what constitutes a local study. **Vice-Chair Martin** continued comments and discussion with the Commission.

**Chairman Puette** reported on the Groundwater and Waste Management Committee by stating that they had two matters to come before the Committee. One was the request to the EMC for amendments to 15A NCAC 13B regarding analysis of septage management. That item passed and will be coming to the EMC in November for authorization to go to public hearing. The other item that took up considerable time was the rules for coal ash of residual management. A question for Counsel will be whether we need a 30-day waiver. Counsel Reynolds commented that he would refer to Counsel Hauser before he provided an answer. Commissioner Rubin pointed out to the Committee to try and stay on schedule.

**Commissioner Carter** reported on the Air Quality Committee and stated that there were four items that were presented before the Committee and action was taken on three of those at full EMC. The only outstanding item they had was one that would be coming back to them in the near term was DAQ seeking authority to implement federal rules with respect to sewage sludge and incinerator guidelines. Director Holman commented they that they can take this to the Division on behalf of the Department and the Commission can take action with getting the MO they set up with EPA without coming back to the Commission. What would come back to the Commission would be revisions to the existing sewage sludge incinerator rules. That will happen in early 2017.

**Chairman Rowlan** stated that they would excuse Commissioner Carroll who was traveling and Commissioner Smith who was dealing with some other issues.

### **Director's Comments**

**Sheila Holman**, Director of Division of Air Quality reported on the implementation of the 2025 ozone standard with an update. Ms. Holman gave an update on the changes permit exemption rule 15A NCAC 02Q.0102 and stated that this would take effect on June 13, 2016. She indicated that the Division sent email notifications to all facilities that were potentially eligible for permit exemption or for registration shortly after the rule change took effect. As of September 2nd, the Division has received 255 requests for permit

rescission and 23 requests for permit registration. The Division is processing these requests. Most facilities will have a compliance assurance visit every other year, even if they qualify for permit exemption to ensure that the regulatory requirements are still being met.

**Chairman Rowlan** asked what was the design value on ozone? Ms. Holman answered that their highest value on ozone was in Mecklenburg County. There was one monitor there that was showing a design value 70 ppb and one that was at 69 ppb. Those are the two monitors that they continue to watch closely.

**Jay Zimmerman**, Director of Division of Water Resources provided the EMC with a couple of updates. The first was that DWR in conjunction with Waste Management was continuing their efforts to ensure they are prepared for any type of mass mortality events related to the CAFO program, in particular to HPAI. They have not had an outbreak but most of the outbreaks had occurred up in the northern states, the Dakotas and Minnesota. Director Scott had been taking the lead with some of DWR staff ensuring that they were adequately prepared and working closely with their partners over at the Dept. of Agriculture. He indicated that DWR was also continuing efforts to streamline their management of documents electronically; in particular, they are moving to shift towards the electronic submittal of permit applications in the NPDES world as well as the discharge Monitoring Reports that are associated with NPDES permits. That program is moving along well and should free up some of the staff resources that are currently devoted towards entering data. **Chairman Rowlan** asked for a target date of implemented and Director Zimmerman responded with a date of the end of this year, but he would verify that date and forward to the Commission. The program is working so well that they are considering expanding that into the submittal of the non-discharge monitoring reports. Those are reports associated with the non-discharge permits land application of wastewater and residuals. If they are successful in that effort that would allow them to refocus some of the staff resources towards other activities associated with managing data. Director Zimmerman stated that the signature certification was one of the holdups and also getting their database to talk nicely with the federal database in the NPDES world.

He commented that a couple of issues related to recent retirements within the Division which they were going to lose some seasoned staff, Kevin Bowden who left the end of August and has been instrumental in helping Jeff Poupart with the permitting section. Steve Kroege who was the Water Sciences section will be retiring the end of September. He was sphere heading their activities associated with the Nutrient Criteria Development Plan in the Science Advisory Committee that is trying to grapple with nutrients. Jim Hawhee

has agreed to step up and take on some of those responsibilities to coordinate the various activities with the stakeholders that are part of that group as well as the Criteria Implementation Committee. He also introduced Ms. Bridgette Morris-McLawhorn who joined the Director's Office to provide administrative support. She brings experience in many of our regulatory areas from her past work in the environmental division of the Attorney General's Office. Bridgette can be reached at 919-707-9134 or via email at: [bmorris@ncdenr.gov](mailto:bmorris@ncdenr.gov).

**Tracy Davis**, Director of Division of Energy, Mineral & Land Resources reported updates on the Dam Safety Program and the Stormwater Program. Director Davis commented that they appreciated the Water Quality Committee's support by approving staff's initial rule categorizations for our NCAC 2K Dam Safety Rules during yesterday's meeting as the first step of the H74 rules review process. He stated that initial rule categorizations will be presented to the full EMC during its November 2016 meeting for its approval and for staff to put the categorizations out for public notice and comment. He indicated that several DEMLR staff would be attending the Association of State Dam Safety Officials' annual meeting in Pennsylvania the week of September 12 to obtain additional engineering and regulatory training as well as interact with other states' dam safety regulatory personnel. Director Davis continued to give more updates on the Dam Safety Program and inform the EMC what they were doing associated to the CCR rule.

He commented that they appreciated the EMC's support and approval of the Annual Stormwater Program Report that was required to be submitted to the Environmental Review Commission by October 1, 2016 and a report transmittal memorandum would be signed by Chairman Rowlan. He also expressed appreciation of the EMC's support and approval of the revised "Licensed Professional" definition language during the meeting to address the Rules Review Commission's objections to the 14 rules related to the prior definition. He stated that staff would promptly deliver the revised rules to the RRC so that the objections to the rules could be removed, and the rules amended, approved at the next RRC meeting on September 15, 2016. He noted that all rules would have an effective date of January 1, 2017 to allow DEMLR staff time to complete development of necessary forms and processes, as well as continue efforts to inform stakeholders of the various aspects of the updated stormwater rules. Director then discussed per the Regulatory Reform Act of 2015 (HB 765), the DEMLR staff as delegated by the EMC was reviewing four delegated local government stormwater management programs for conformance with the EMC's model program. He indicated that DEMLR would communicate in writing to each of the local programs regarding the results of DEMLR's review by the December 1, 2016 deadline specified in the Act. A summary of our review process and findings will be included in our 2016 Annual Report on Water Supply Watershed



Ordinance Approvals, Unified Stormwater Management Program Ordinance Approvals, and Phase II Program Implementation Delegations Report due to the EMC Water Quality Committee in March 2017. Discussion and questions from the Commissioners continued.

**Michael Scott**, Director of Division of Waste Management offered a thank you to the Groundwater Waste Management Committee for their assistance on the Coal Combustion Residual Rules. Additional topics included an announcement that three sets of rules coming before the Commission (15A NCAC 13A, 13B and 13C rule sets), initiating a rule development process related to vapor intrusion, the Rules Review Commission passing the Life of Site rule set, and lastly the transition of IT staff within the department to the Department of Information Technology.

**Chairman Rowlan** thanked all the department heads, **Vice Chair Martin** and the committee chairs for getting all the information on the tracking schedule and it was really helpful for him, and he really appreciated everyone's efforts.

#### **By Commission Members**

**Commissioner Tedder** thanked Counsel Phillip Reynolds for joining the EMC in Counsel Jennie Hauser's absence.

**Commissioner Wilsey** thanked **Vice-Chairman Solomon** for chairing the Water Quality Committee in her absence and carrying out the hard work that the Committee did.

**Commissioner Solomon** indicated that one thing that they had not noted was the Union County IBT which the hearings were completed of the previous two weeks. They did three of the two requirements in that two-week period. As a point of interest two points of contention it has been two counties who stated they did not get proper notice. A couple of members of the General Assembly had gotten involved. **Commissioner Solomon** stated that from all appearances and staff was very confident that all had been done correctly. That seemed to be the issue from the public comment side and the written comment period closes October 3, 2016. From staff's perspective they should still see the IBT Certificate request in January.

**Vice-Chair Martin** reminded the Commissioners that the Agenda Tracking sheet was live and had been since the middle of August and that he had sent an email out to everyone with the link. He indicated that the Lois had also published it to the EMC website. A notice also went out to the EMC ListServ so that the public was aware that that the link was there. He also indicated that in his email he described the responsible person for making changes. However, anyone who notices something that are either stated incorrectly or missing who they need contact is listed. He commented that if anyone had not received the email to contact him and he would forward it to them immediately. The Agenda Tracking sheet has been completed and everything is moving forward. He expressed his appreciation to staff and the directors and their staff for their efforts.

**By Counsel**

Commission Counsel Phillip Reynolds thanked the Commission for allowing him to serve and for the comments from **Commissioner Tedder** and **Commissioner Solomon**. He indicated that for the litigation update summary there had been no change from the summary in July.

**By Chairman**

**Chairman Rowlan** closed the meeting by thanking everyone and he appreciated their attendance. He expressed his appreciation for the work by the Department, the various directors and **Vice Chair Martin** for pushing forward in getting the information to the Commissioners.

With no further business before the Commission, the Chairman adjourned the meeting at 12:25 p.m.

Approved this day 8th of September 2016.

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**Steven J. Rowlan, Chairman of the EMC**